



THE MONETARY AUTHORITY OF SINGAPORE

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# **GUIDELINES ON THE REGULATION OF MARKETS**

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Securities and Futures Supervision Department

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*These Guidelines, made pursuant to section 321 of the Securities and Futures Act 2001 (“SFA”), are intended to provide general guidance and do not create any legally enforceable obligations or duties. They do not have the force of law and should not be interpreted in a way that would override the relevant legislative provisions.*

*The illustrations at the Appendix are intended to illustrate how the Monetary Authority of Singapore (“the Authority”) intends to administer the legislative provisions and regulatory framework relating to markets. Our assessment would be based on the facts and circumstances presented for each individual case and do not have general application to arrangements that adopt the names of the terms used. It is the substance and not the form of the arrangement that will be used as the basis of our evaluation. Hence, the illustrations do not have the force of law and will not prejudice the Authority’s decisions. **Please note that the onus is on a person undertaking an activity to ascertain whether the proposed activity requires authorisation as a market under the SFA. Persons who are in doubt whether their proposed activities require markets authorisation are advised to discuss this with us at an early stage.***

# 1 INTRODUCTION

## Background Information

1.1 Technological advances, financial innovation and globalisation have facilitated the cross-border reach of exchanges and trading platforms. In light of these global developments, Part II of the SFA updates and fine-tunes the regulatory regime for markets in Singapore.

1.2 The SFA provides for a flexible approach for regulating a wide range of entities that establish and maintain various forms of markets in Singapore. The SFA creates a new category of market - the “Recognised Trading System Providers”. This will allow the Authority to tailor its specific regulatory requirements to the risks involved in the different styles of market operations. The new regime is designed to achieve our objectives of ensuring that markets are orderly, informed and fair, that investors are protected and systemic risks reduced.

## Objectives of These Guidelines

1.3 The Authority is issuing these guidelines to assist market participants better understand how we will administer the SFA legislative provisions relating to markets. The objectives of these guidelines are to:

- a) elaborate on the Authority’s approach to administering the SFA markets regime;
- b) outline the key regulatory factors the Authority will evaluate when determining whether a person is operating a market that is subject to regulation under the SFA;
- c) explain the Recognised Trading System Providers regime; and
- d) highlight the transitional arrangements that will apply for existing regulated and exempt market operators.

## 2 SCOPE OF THE MARKETS REGIME IN THE SFA

2.1 The First Schedule of the SFA defines “securities market” and “futures market” as follows:

*“securities market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities (whether through that place or facility or otherwise), but does not include a place or facility used by only one person —*

- (a) to regularly make offers or invitations to sell, purchase or exchange issued securities, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities; or*
- (b) to regularly accept offers to sell, purchase or exchange issued securities.*

*“futures market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise), but does not include a place or facility used by only one person —*

- (a) to regularly make offers or invitations to sell, purchase or exchange futures contracts, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts; or*
- (b) to regularly accept offers to sell, purchase or exchange futures contracts;*

The following paragraphs elaborate on some of the key elements of the definitions and how the Authority will administer them.

## Technology Neutral Approach

2.2 The Authority will adopt a technology neutral approach. All market operations, regardless of whether they are brick-and-mortar trading floors or fully electronic trading platforms, are subject to the same regulatory regime under the SFA since a market is defined as “***a place at which, or a facility (whether electronic or otherwise) by means of which...***”.

2.3 The definition does not mean that any person is deemed to be operating a “securities market” or “futures markets” merely by establishing some form of electronic facility. For instance, a pure **electronic order-router**, operated by a licensed intermediary, would not be regulated under the SFA definition as a market (see Illustration 1 in Appendix). The legislation is not intended to capture as a regulated market, a facility that merely acts as a conduit or channel of communication to a regulated market, without other functionalities. This is the same treatment as an intermediary using a telephone or facsimile machine to transmit customer orders to the relevant regulated market or markets.

2.4 Likewise, **providers of technology infrastructure or software** for order routing facilities or trading facilities will not be subject to the markets regime (Illustration 2) as they are not in the businesses of operating markets. Instead, they supply the hardware or software to enable their clients - the licensed intermediaries or authorised markets - to implement their business models. This is the same as the current treatment of various service providers for telephone lines, computer systems, software and other infrastructure facilities.

## Regularly

2.5 One of our key objectives is to ensure that any person who carries on a business of establishing and/or operating a market has proper systems and procedures to ensure market integrity and investor protection. The legislation is not intended to catch one-off transactions. Offers or invitations need to be made on the facility “***regularly***”. The term “regularly” refers to systematic and recurring transactions. It does not mean that transactions have to be executed at certain specified intervals or continuously.

## Reasonable Expectation of Transactions

2.6 Under the SFA, markets are not limited to trade execution or matching mechanisms which only result in the acceptance or making of offers to sell, purchase or exchange futures contracts or issued securities directly on the facility or system itself. An arrangement or facility where the participants provide sufficient information on their identities as well as firm prices and order sizes for transactions may require authorisation as a market. This is so even where the final negotiation and/or execution is not done directly on the facility. The relevant part of the definition refers to “.....*being offers or invitations that are intended or may reasonably be expected, to result, whether **directly or indirectly**, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities **whether through that place or facility or otherwise**...*”

2.7 Accordingly, a key consideration is whether buyers and sellers have reasonable expectations that they can transact based on the information posted on the facility. Examples include certain **bulletin boards and electronic platforms automating traditional over-the-counter markets** (Illustrations 3 and 4). It is common for potential buyers and sellers to post transaction information on such an electronic facility and for subsequent negotiations to be concluded bilaterally off the facility. So long as the information posted enables parties to reasonably expect to enter into or conclude a contract, the facility will be treated as a market under the SFA, irrespective of the facility’s clientele or product focus.

## Non-multilateral Markets Excluded

2.8 The previous definitions of market under the Securities Industry Act, Chapter 289 (“SIA”) and Futures Trading Act, Chapter 116 (“FTA”) were very broad, resulting in some operations of dealers or brokers potentially being caught as markets.

2.9 The SFA clarifies that only a market place or facility that brings together many buyers and many sellers on a centralised basis will be regulated as a market. A market as defined under the SFA “...**does not include a place or facility used by only one person**”.

2.10 Facilities or arrangements that operate on a “one-to-many” basis do not require authorisation as markets. An example is a **market-making facility by an intermediary** which takes principal positions (Illustration 5).

Nonetheless, the intermediary will have to comply with the relevant regulatory requirements applicable to capital markets services licence holders.

### **Regulatory Focus on Secondary Markets**

2.11 The term “***issued securities***” limits the operation of the market provisions to secondary markets. “Issued securities” means listed or unlisted securities that have been previously offered either by means of private placement or public offering to investors which are now available for secondary trading.

2.12 The markets provisions are not applicable to primary offerings of securities where issuers or corporations issue securities in a one-off transaction (Illustration 6). Primary offerings are regulated through different mechanisms such as disclosure requirements, use of prospectus, due process and other regulatory processes. The provisions governing public primary offerings are found in Part XIII of the SFA on Offers of Investments.

### 3 FACTORS FOR DETERMINING JURISDICTION

3.1 Advances in technology have witnessed the emergence of trading systems, both located domestically and overseas, which challenge the traditional notion of national boundaries. Once a website is created on the Internet, it is potentially accessible from any part of the world. The regulatory issue that arises is whether Internet based trading systems are establishing a market in Singapore?

3.2 The following paragraphs provide guidance on some factors the Authority will use in assessing whether a person is establishing or operating a market that is subject to regulation under the SFA. In administering the legislation, we aim to ensure proper regulation of markets operating in Singapore while avoiding an overly wide regulatory reach that imposes regulation not commensurate with the risks involved. ***It is important to note that the factors cited below are non-exhaustive.*** They are meant to illustrate how we will implement the legislative provisions. Further, no one single factor is conclusive evidence. A combination of factors, judged from the facts and circumstances of each case, will form the basis for our assessment.

3.3 A person operating a market will be required to be authorised or recognised under the SFA if:

- a) the market is located in Singapore;
- b) the market is directed or targeted at investors in Singapore; or
- c) there is direct customer access to the market by investors in Singapore.

Investors, in this context, encompass both individual and corporate investors including an intermediary undertaking proprietary trades.

3.4 In the electronic realm, it is no longer appropriate or sufficient to determine location using a pure physical presence test. Even if a person does not operate a market physically from Singapore, access to the market by investors or intermediaries in Singapore through the electronic medium will have implications for our regulatory objectives. Generally, the Authority will consider that a market is located in Singapore if:

- a) the trading floor or all or part of the trading infrastructure is operated from Singapore physically; or
- b) investors or intermediaries in Singapore are able to access the market through screens or terminals placed in Singapore and directly make or accept offers or invitations on the market through these screens or terminals (Illustration 7).

3.5 Consistent with our risk-focussed regulatory philosophy, we will not assert jurisdiction simply because an Internet website is accessible by investors in Singapore. Our policy approach is to focus on persons soliciting transactions by employing measures that are targeted or directed at investors or intermediaries in Singapore. The descriptions below are indicative of actions we consider would be targeting at investors in Singapore:

- a) use of distribution network(s) or agent(s) marketing its services or products in Singapore;
- b) advertising or publicising using any media to directly draw the attention of investors in Singapore to the market. We will consider advertisement to a specific person or groups of persons e.g. direct mailers to selected potential customers. Advertisements in local media is another *prima facie* factor. Other considerations include the language used in the advertisements, whether application forms for participation are attached or contact person to respond to enquiries;
- c) prices of futures contracts or securities traded on the market are denominated in Singapore dollars; or
- d) sending e-mails to advertise or invite participation directly to specific individuals or groups of individuals.

We will look at the actions of the person in determining whether the market is targeted at investors or intermediaries in Singapore. Any person found engaging in one or more of the above measures will be required to demonstrate why no action should be taken against them for operating an unauthorised market aimed at investors or intermediaries in Singapore.

3.6 An investor in Singapore has direct customer access to a market if the investor can purchase or sell futures contracts or securities on the market without the assistance or intervention of an intermediary. A person operating such a market is required to be authorised or recognised under the SFA.

3.7 A market located outside Singapore will not require authorisation as a market under the SFA if an investor in Singapore accesses the overseas market through an intermediary in Singapore who forwards the order to another intermediary in the jurisdiction where the market is located. This is because the investor in Singapore does not have direct access to the market in such an arrangement.

3.8 However, the requirement for market authorisation applies where an intermediary in Singapore accepts orders from investors in Singapore and routes the orders to a market outside of Singapore. Similarly, market authorisation issue may arise where an overseas intermediary receives orders directly from investors in Singapore, and passes the orders on to an overseas market.

3.9 Similar to the approach used to ascertain if a person is targeting investors in Singapore, we will require the foreign market in these circumstances to demonstrate why no action should be taken against them for operating an unauthorised market aimed at investors in Singapore.

3.10 A person can take positive steps to ensure that it is not considered by us to be targeting or soliciting investors in Singapore and, therefore, not operating a market subject to regulation under the SFA. There are a number of measures to achieve this objective, which include but are not limited to:

- a) a prominent and clear disclaimer on its site stating that the person does not deal with investors in Singapore or that it will only deal with investors from countries specifically listed which does not include Singapore; and
- b) the person takes reasonable precautions to prevent investors in Singapore from accessing its market and trading on the facility. Actions considered as “reasonable precautions” include screening access by investors with a Singapore address (electronic or otherwise), refusing trading on its market by an investor in Singapore, or other measures designed to restrict access by investors that it is not authorised to deal with.

The Authority will take into account the existence or otherwise of clear disclaimers and effective procedures designed to prevent unsolicited access by investors in Singapore when we evaluate whether a person is establishing or maintaining a market that is subject to our jurisdiction.

## **4 RECOGNISED TRADING SYSTEM PROVIDERS (“RETS PROVIDERS”)**

### **Flexible Approach**

4.1 Under the SIA and FTA the only choices were to either authorise a market operator as a fully regulated exchange or exempt it with conditions. Given the emergence of different style of market operators, the Authority recognises that the previous regime is no longer appropriate.

4.2 The SFA now provides for a Recognised Trading System Providers (“RETS Providers”) regime to address this emerging market development. In administering the new RETS Providers regime, the Authority will seek to balance the regulatory objectives of maintaining market integrity, investor protection and financial stability, with the developmental considerations of facilitating innovation and competition. The Authority will also seek to maintain a level playing field between persons operating similar market operations with similar risks profiles. This is achieved through tailoring the recognition conditions to address the regulatory risks involved instead of having a one-size-fits-all approach.

### **Exemption from Recognition**

4.3 Under sections 5 and 6 of the SFA, the Authority may exempt a person engaging in some market activities from authorisation or recognition requirements if:

- a) the person is a financial institution listed in section 99 of the SFA or a capital markets services licence holder engaged in dealing in securities or trading in futures contracts; and
- b) the Authority is satisfied that the person’s market operations are not its predominant business.

In granting an exemption, the Authority may impose conditions or restrictions. These exemption conditions will reflect the nature and extent of the person’s market operations as well as the clientele reach.

4.4 The person exempted will be required to report, on a quarterly basis, on the revenue or daily trading volume of its market activities.

4.5 As a general guide, the Authority will consider a person's market operations as constituting its predominant business if the person's market activities exceed 10% of its revenue or average daily trading volume. The Authority may also impose additional requirements if the person has more than 20% of the average daily trading volume of any particular security or class of securities.

4.6 These percentages will be used as trigger levels for the Authority to discuss with the exempt person its future business plans and direction. On a case-by-case basis, the Authority will consider whether there is the need to remove the exemption, impose additional regulatory requirements, vary the threshold subject to further conditions or impose some other limits on the exempt person's market activities.

4.7 The exemption conditions will cover the following areas. The exact calibration will depend upon the scope, nature, extent and complexity of the person's market operations:

- a) restrictions on clientele or investor reach arising from investor protection concerns e.g. retail, sophisticated or institutional clients;
- b) conditions on products or services offered;
- c) conditions on risk management and controls over the market's infrastructure, procedures and processes;
- d) responsibilities to monitor and enforce rules and procedures established to ensure fair, efficient and transparent market e.g. best execution rules;
- e) record keeping requirements and confidentiality of information and data; and
- f) reporting and disclosure requirements.

The above list is indicative and not exhaustive. If our assessment is that the market activities concerned pose other risks, additional conditions may be imposed

## **Recognition Requirements and Conditions**

4.8 The Authority will consider the facts and circumstances of each application in deciding on the appropriate recognition conditions. The regulatory requirements will be commensurate with the risk profile, nature and scope of the functions of the proposed market operations. The coverage of the recognition conditions will be similar to that noted for exemption conditions in Paragraph 4.7 above. The aim is to ensure that a RETS Provider has sufficient financial, human and system resources to operate an orderly, informed and fair market in accordance with section 36 of the SFA.

4.9 Overseas exchanges applying for recognition must, at the minimum, have a Singapore address for the service of notice. The Authority will also have to be satisfied that:-

- a) the applicant is willing and able to co-operate with the Authority in sharing information and in other ways;
- b) adequate arrangements have been made with the regulator of the applicant's head office on regulatory co-operation and its regulatory regime is equivalent to that in Singapore; and
- c) adequate arrangements have been made between the applicant and an exchange in Singapore in respect of the supervision of persons trading on both markets, if applicable.

Generally, the Authority will consider that adequate arrangements have been made under (b) above where there is a memorandum of understanding, or similar formal documentation, on information exchange and mutual assistance between the Authority and the applicant's home regulator.

## **Status of Exempt Bond Markets**

4.10 Pursuant to the Securities Industry (Exempt Stock Market) Declaration of 15 Aug 1986 and Securities Industry Regulations 37 of the SIA, a number of electronic bond portals are currently treated as exempt stock markets. These platforms are mainly wholesale (inter-professional) and over-the-counter markets.

4.11 These exempt bond portals fall within the scope of the RETS Providers regime. To maintain a level-playing field, we will migrate these exempt bond markets to the RETS Providers framework. Further, the flexible approach adopted for RETS Providers regime will allow the Authority to tailor regulatory requirements for these previously exempt bond markets.

## **5 TRANSITIONAL PROVISIONS**

5.1 Under the Transitional and Savings Provisions contained within the Securities and Futures (Markets) Regulations 2002 (“SFA Transitional Provisions”), the Singapore Exchange Securities Trading Ltd and Singapore Exchange Derivatives Trading Ltd are deemed to be an approved securities exchange and an approved futures exchange respectively under the SFA. As some of the requirements applicable to exchanges are now given statutory backing under the SFA, the Singapore Exchange will be given 6 months, from the date on which Part II of the SFA comes into operation, to comply with all the statutory requirements.

5.2 The SFA Transitional Provisions also provide for markets that were previously declared as exempt stock markets under the SIA or as exempt futures markets under the FTA to continue as exempt securities markets or exempt futures markets, respectively, under the SFA. Some of these markets will be migrated to the RETS Providers regime without the need for a fresh application. The Authority will notify these entities of their recognition as RETS Providers under the SFA. They will be given 6 months, from the date on which Part II of the SFA comes into operation, to comply with all the statutory requirements under the SFA. Further, any conditions these exempt markets were previously subject to will continue to apply under the SFA, unless explicitly varied by the Authority. Those exempt markets that are not subject to regulation as markets will also be notified accordingly.

**ILLUSTRATIONS ON THE APPLICATION OF PART II OF THE SFA**

**Illustration 1 – Electronic Order Router**

**Description of the arrangement**

*A capital markets services licence holder (“licensed intermediary”) is authorised under the SFA to undertake the regulated activities of dealing in securities and trading in futures contracts. It provides an electronic facility that enables clients to input orders for securities and futures contracts through its secured website. The facility channels the clients’ orders to the relevant exchanges for matching without any alteration.*

The licensed intermediary providing the facility does not require authorisation as a market. The electronic facility is an additional channel for the licensed intermediary to receive and transmit orders to exchanges. Clients’ orders are not matched on the pure order routing facility, which serves simply as a conduit.

**Illustration 2 - Technology Service Providers**

**Description of the arrangement**

*A person provides proprietary software that enables licensed intermediaries to place orders for foreign securities and futures contracts with overseas intermediaries. The proprietary software also enables the transmission of execution reports back to the licensed intermediaries who entered the orders. The software is installed either on proprietary terminals provided by the person or on licensed intermediaries’ own computers. The person also provides financial information and news updates to the licensed intermediaries.*

The person does not require authorisation as a market. A technology service provider or communication systems supplying the infrastructure or software for order routing is a tool-maker. Orders are not executed on the terminals or software provided by the person.

### **Illustration 3 – Bulletin Boards**

#### **Description of the arrangement**

*A person provides an electronic facility via a website to licensed intermediaries and institutional investors in Singapore. The person operating the market also has marketing agents here. The website contains a “bulletin board” where participants can post indicative prices, volumes, and counters of the securities that they wish to transact. The facility also enables participants to obtain the identities of interested counterparties either via its website or through other communication means. All subsequent negotiation, trading, clearing and settlement activities will be undertaken off the person’s website independently between transacting participants. The person also does not perform any trade matching and execution. It also does not clear, settle or assume central counterparty risks.*

The person providing the facility requires authorisation as a RETS Provider. The information posted on the website and the ability to ascertain the identity of interested counterparties lead to a reasonable expectation indicative offers or invitations will result in a transactions. As the facility is made available to licensed intermediaries and investors in Singapore, the Authority will exercise jurisdiction and require the person providing the facility be recognised under SFA.

### **Illustration 4 – Electronic Trading Facilities**

#### **Description of the arrangement**

*A person provides an electronic facility for licensed intermediaries and institutional investors in Singapore to trade in corporate and government bonds. These participants can access the trading facility either via a secured website or through proprietary terminals. Participants post firm prices for the order size that they wish to transact. The facility automatically executes and clears a firm-price order if it matches an existing firm order. The facility does not settle trades. Settlement is undertaken subsequently between the 2 counterparties. If no match is immediately available, the facility displays the firm orders to all clients.*

The person providing the facility requires authorisation as a RETS Provider. The facility is targeted at licensed intermediaries and investors in Singapore. Orders with firm prices are automatically matched on the facility and there is reasonable expectation that orders posted on the facility will lead to a transaction.

## **Illustration 5 – Market-making Facility**

### **Description of the arrangement**

*A licensed intermediary, authorised under the SFA to undertake the regulated activity of dealing in securities, provides an electronic proprietary market-making facility for its clients to trade in warrants. Each warrant is given a number for identification. Clients will input into the facility the identification number of warrants and the volume they wish to buy or sell. In return, the licensed intermediary will indicate a price at which it is prepared to trade. If there is a matching order, it will execute the order against its own inventory.*

The licensed intermediary does not require authorisation as a market as its facility is not a multilateral market but a “one-to-many” facility.

## **Illustration 6 – Facility for Placement of Primary Issuance**

### **Description of the arrangement**

*A person provides an electronic facility via a website to facilitate companies to raise funds through primary placement of their shares with investors. This website is made available only to institutional investors in Singapore and financial institutions licensed by the Authority.*

The person does not require authorisation as market because the person’s facility constitutes a primary securities market that is excluded from the definition of “securities market” under the SFA.

## **Illustration 7 – Remote terminals of Overseas Exchanges**

### **Description of the arrangement**

*A person is licensed to operate as a futures exchange in another jurisdiction. The person provides proprietary trading terminals for licensed intermediaries to enter orders and effect transactions on the person's exchange from their premises in Singapore. This facility allows the licensed intermediaries to have direct remote access to the person's exchange. Transactions can be effected on the exchange through the terminals.*

The person operating the overseas exchange requires authorisation as a RETS Provider under SFA. The terminals are located in Singapore and the licensed intermediaries have direct access to the person's market.